

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION**

**LARRY DONNELL LEWIS**

**PETITIONER**

**v.**

**No. 2:08CV169-M-A**

**PETE MISSKELLY, ET AL.**

**RESPONDENTS**

**ORDER TRANSFERRING CASE TO THE  
FIFTH CIRCUIT COURT OF APPEALS**

This matter comes before the court, *sua sponte*, for consideration of the transfer of this cause. Larry Donnell Lewis has submitted a petition for a writ of *habeas corpus* under 28 U.S.C. § 2254. The petitioner was convicted for aggravated assault and simple assault on June 17, 2003. Since that time, he has unsuccessfully pursued a direct appeal. *See Lewis v. State*, 897 So.2d 994 (Miss.App.2004), *reh'g denied* (Miss.App. Dec. 14, 2004) (2003-KA-01532-COA), *cert. denied* (Miss. March 31, 2005) (2003-CT-01532-SCT).

The petitioner has filed at least one other unsuccessful 2254 motion concerning the same conviction which he now seeks to challenge. *See Lewis v. State*, 2:05CV80-P-B (N. D. Miss.). The Antiterrorism and Effective Death Penalty Act requires that before a district court files a second or successive petition, “the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” The petitioner has not obtained such an order. Rather than dismissing the petition on this basis, the Fifth Circuit has allowed district courts to transfer the petition for consideration pursuant to 28 U.S.C. § 2244(a) and

(b)(3)(c). *See In re Epps*, 127 F.3d 364, 365 (5<sup>th</sup> Cir. 1997). Therefore, in the interest of justice and judicial economy, it is hereby

**ORDERED:**

1) That this petition shall be transferred to the Fifth Circuit Court of Appeals for the petitioner to seek permission to file this successive 2254 petition;

2) That the Clerk of Court is directed to transfer this petition and the entire record to the Fifth Circuit Court of Appeals in accordance with 28 U.S.C. § 2244(a) and (b)(3)(c), and *In re Epps*, 127 F.3d at 365;

3) That all pending motions in this case are hereby **DISMISSED** as moot; and

3) That this case is **CLOSED**.

THIS the 1<sup>st</sup> day of August, 2008.

/s/ MICHAEL P. MILLS  
**CHIEF JUDGE**  
**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF MISSISSIPPI**